COLORADO
Department of Labor and Employment
Division of Labor Standards and Statistics
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STATEMENT OF BASIS, PURPOSE, SPECIFIC STATUTORY AUTHORITY, AND FINDINGS

County Collective Bargaining Rules ("COBCA Rules"), 7 CCR 1103-11 (2023), as proposed March 15, 2023; to be followed and replaced by a final Statement at the conclusion of the rulemaking process.

I. BASIS: The Director ("Director") of the Division of Labor Standards and Statistics ("Division") has authority to adopt rules and regulations under the authority listed in Part II, which is incorporated into Part I as well.

II. SPECIFIC STATUTORY AUTHORITY: These rules are issued under the authority, and as implementation and enforcement of, Colorado Revised Statutes ("C.R.S.") Title 8, Article 3.3 (2023), the "Collective Bargaining by County Employees Act," as well as the general labor law implementation and enforcement authority of C.R.S. Title 8, Articles 1 and 3 (2023), and are intended to be consistent with the rulemaking requirements of the State Administrative Procedures Act, § 24-4-103. These rules are promulgated pursuant to express authority including, but not limited to, C.R.S. §§ 8-1-118; 8-3.3-106, -108, -109, and -115(6)(b).

III. FINDINGS, JUSTIFICATIONS, AND REASONS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(4)(b), the Director finds as follows: **(A)** demonstrated need exists for these rules, as detailed in the findings in Part IV, which are incorporated into this finding as well; **(B)** proper statutory authority exists for the rules, as detailed in the list of statutory authority in Part II, which is incorporated into this finding as well; **(C)** to the extent practicable, the rules are clearly stated so that their meaning will be understood by any party required to comply; **(D)** the rules do not conflict with other provisions of law; and **(E)** any duplicating or overlapping has been minimized and is explained by the Division.

IV. SPECIFIC FINDINGS FOR ADOPTION. Pursuant to C.R.S. § 24-4-103(6), the Director finds as follows.

A. Broad Purpose of Rules.

The "County Collective Bargaining Rules," or "COBCA Rules," is a new rule set implementing the requirements of the Collective Bargaining by County Employees Act ("COBCA" or "the Act"), S.B. 22-230 (Ch. 260, sec. 2, § 8-3.3-101 *et seq.*, 2022 Colo. Sess. Laws 1900, 1900–1920, enacted May 27, 2022 and effective July 1, 2023[1]). COBCA requires Division rulemaking to create a regulatory framework consistent with the legislative declaration in COBCA:

(a) "promot[ing] harmonious, peaceful, and cooperative relationships between counties and county employees";

(b) "recogniz[ing] the rights of county employees to join organizations of their own choosing, to be represented by those organizations, and to collectively bargain with their employer over wages, hours, and other terms and conditions of their employment thereby improv[ing] the delivery of public services"; and

(c) recognizing that "collective bargaining for county employees is a matter of statewide concern that affects public safety and general welfare."[2]

COBCA requires the Division to promulgate rules as it deems necessary for its enforcement, interpretation, application, and administration of COBCA. Division rulemaking is required under COBCA to establish administrative procedures for (1) designating appropriate bargaining units under C.R.S. § 8-3.3-110; (2) selecting, certifying, and decertifying exclusive representatives under C.R.S. §§ 8-3.3-108, -109, and -111; and (3) filing, hearing, and determining complaints of unfair labor practices under C.R.S. § 8-3.3-115.

The COBCA Rules detail procedures, rights, and responsibilities for those three key aspects of COBCA. First, with respect to appropriate bargaining units, these rules largely follow the procedure detailed by COBCA and make explicit certain overarching policy considerations that inform any public sector bargaining unit determination, in addition to the factors expressly outlined in C.R.S. § 8-3.3-110(2). Second, with respect to the certification and decertification process for county employees, these rules detail how the Division will receive petitions, resolve bargaining unit disputes, evaluate the sufficiency of a showing of interest, conduct representation elections, and determine any disputes or other complications, such as runoff elections or ties, that may arise in the election process. Third, with respect to unfair labor practice complaints (which may be filed by county employees, their employee organizations, or a county), these rules

[1] Except § 8-3.3-106, in COBCA § 2, and §§ 3-5, enabling Division rulemaking and program creation, effective July 1, 2022.

[2] Ch. 260, sec. 2, § 8-3.3-101 *et seq.*, 2022 Colo. Sess. Laws 1900, § 1 (Legislative Declaration).

detail how the Division will receive, investigate, and adjudicate complaints. Where appropriate, these rules follow the general labor law implementation and enforcement authority of the Industrial Relations Act and its implementing rules, providing consistency and transparency in Division labor relations processes.

B. Rule 2: Definitions.

1. Rule 2.2: Definition of "bargaining unit" as used in C.R.S. § 8-3.3-102(1).

Rule 2.2 reiterates the definition of a "bargaining unit" set forth in C.R.S. § 8-3.3-102(1) for convenience of reference. Though the Division received some comments requesting additional clarification about categories of employees excluded from a bargaining unit,[3] the Division finds that the terms "confidential employee," "managerial employee," "executive employee," and "temporary, intermittent, or seasonal employees" are sufficiently defined by COBCA; follow similar definitions in the Colorado Partnership for Quality Jobs and Services Act;[4] and are well-developed in other case law and administrative decisions, including under the federal National Labor Relations Act ("NLRA"), by the National Labor Relations Board ("NLRB"),[5] and in public employee bargaining statutes in other jurisdictions,[6] all of which may also provide guidance in situations where the facts support their application.

2. Rule 2.10: Definition of "employee organization" as used in C.R.S. § 8-3.3-102(12).

Rule 2.10 clarifies that the language of C.R.S. § 8-3.3-102(12), which uses the term "a nonprofit organization" in defining an employee organization, should be interpreted consistently with the State's long-standing practice of allowing informal groups of employees to petition for certification as the exclusive representative of an appropriate bargaining unit.

3. Rule 2.13: Definition of "organizations" as used in C.R.S. § 8-3.3-104(4).

The Division received comments from county commissioners expressing concern that the C.R.S. § 8-3.3-104(4) regulation of deductions could interfere with a county's ability to facilitate other voluntary deductions from employee paychecks, such as for charitable organizations. Rule 2.13 clarifies that § 104(4) regulation of deductions for exclusive representatives or related entities is limited to such entities, not other situations such as charitable organization deductions.

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[3] Written comment, 12/13/22, by: Daniel Perkins, Senior Assistant County Attorney, Arapahoe County Attorney's Office; Olivia Lucas, Senior Assistant County Attorney, Boulder County Attorney's Office; Daniel Tom, County Attorney, Chaffee County Attorney's Office; Matthew Hoyt, County Attorney, Gunnison County Attorney's Office; Jason Soronson, Assistant County Attorney, Jefferson County Attorney's Office; M. Christina Floyd, County Attorney, Lake County Attorney's Office; Sheryl Rogers, County Attorney, La Plata County Attorney's Office; Bill Ressue, County Attorney Larimer County Attorney's Office; Nina Atencio, Chief Deputy County Attorney, Mesa County Attorney's Office; Amy Markwell, County Attorney, San Miguel County Attorney's Office; Kenneth Fellman, Kissinger & Fellman for Yuma County Attorney's Office, at 3 (requesting in point #7: "Clarification of vague terms. The rules should more specifically define terms/concepts such as . . . categories of employees that are excluded from being in a bargaining unit.").

[4] C.R.S. § 24-50-1102(2), (3), (8), and (10) (2022); *see also Colorado Workers for Innovative and New Solutions v. Veitch*, No. 2021CV32782 (Denver Dist. Ct. June 29, 2022) (unpublished) (applying FLSA regulatory guidance and out-of-state case law defining "executive employee" where the statutory language was identical to that in the Colorado Partnership Act).

[5] Section 2(11) of the NLRA defines the term "supervisor" as follows: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." 29 U.S.C. § 152(11). With respect to the 12 listed indicia, Section 2(11) is to be interpreted in the disjunctive and "the possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class." *Ohio Power Co. v. NLRB*, 176 F.2d 385, 387 (6th Cir 1949), *cert. denied*, 338 U.S. 899 (1949); "Managerial employees are defined as those who 'formulate and effectuate management policies by expressing and making operative the decisions of their employer.'" *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 682, 100 S. Ct. 856, 862 (1980) (quoting *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974)).

[6] *E.g.*, Mass. Ann. Laws ch. 150E, § 1 (2022) (defining and excluding "managerial" and "confidential" employees from definition of "Employee" or "public employee"); 5 Ill. Comp. Stat. Ann. 315/3 (2022) (defining and excluding "Confidential" and "managerial" employees from "public employee" or "employees" under Illinois Public Labor Relations Act; also excluding executive and short-term employees); Ohio Rev. Code Ann. § 4117.01(C) (2022) (excluding 17 categories of employees from "public employee," including "confidential employees," "management level employees," "seasonal and casual employees," and staff to the "chief executive of the public employer whose principal duties are directly related to the performance of the executive functions . . . ").

4. Rule 2.15: Posting.

Rule 2.15 defines what it means to "post" a notice, to provide employers more concrete guidance on how to notify employees of relevant COBCA matters. Though COBCA uses only the work "distribute,"[7] the statutory language confirms a legislative intent to ensure that all affected employees are reached, a purpose served by interpreting effective distribution as including posting, a traditional way to ensure notice to employees. The Rule 2.15 definition of "post" also recognizes and addresses recent shifts in the modern workplace—e.g., employees may work remotely or otherwise away from an employer's office or place of business—by also requiring public posting on electronic fora used by the employer.

C. Rule 3.1: Filing.

Rule 3.1 follows the filing and service provisions in other Division rules and facilitates the Division's ongoing shift to electronic filing. The rule, however, also recognizes that the Division's shift to electronic filing is ongoing and that at this time not everyone has electronic access, by providing that if the Division does not provide a form or "if a party cannot readily use such [electronic] means for filing," any other means of contacting the Division are acceptable, so long as the submission is, in fact, received by the Division.

D. Rule 3.2: Serving another party.

Because the Division will often require parties engaged in Division election or unfair labor practice processes to deliver copies of documents or filings to other interested parties, this rule identifies appropriate methods for serving the other parties, and clarifies that the Division does not require certain service formalities that some court rules may require.

E. Rule 3.3: Computation of time.

Rule 3.3 clarifies that calendar days will be used to calculate time under COBCA, following C.R.S. § 2-4-108.

F. Rule 4.1.5: Certification of voluntarily-recognized employee organizations as the exclusive bargaining representative.

Rule 4.1.5 recognizes that if an employee organization is voluntarily recognized as required by C.R.S. § 8-3.3-108(a) and (b), then nothing in COBCA requires an employee organization to seek certification from the Division as the exclusive bargaining representative. But because the certification process conveys the full protections of the Act to an employee organization, including the certification bar provided in C.R.S. § 8-3.3-111(3), voluntarily-recognized employee organizations may wish to seek certification. Accordingly, COBCA provides a simplified procedure for certain voluntarily-recognized employee organizations to obtain certification in C.R.S. § 8-3.3-108(2)(a)-(b).

G. Rule 4.4: Appropriate bargaining unit disputes under C.R.S. § 8-3.3-110.

Rule 4.4 explains how the Division will evaluate an appropriate bargaining unit. COBCA permits the parties to consent to an appropriate unit, and the plain language of COBCA, C.R.S. § 8-3.3-110(1), excuses the Division from ruling on the appropriateness of a bargaining unit where (A) the parties consent to the unit,[8] and (B) the unit does not otherwise violate COBCA.[9] Should the parties be unable to agree, however, Rule 4.4.1 explicitly incorporates the purposes of COBCA as part of the Division's determination of the appropriate bargaining unit.

H. Rule 4.4.1: Factors that may be considered when determining the appropriate bargaining unit.

Under COBCA, relevant factors in determining an appropriate bargaining unit include any "that are normally or traditionally taken into consideration in determining the appropriateness of bargaining units in the public sector." C.R.S. § 8-3.3-110(2)(f). Given the variety of settings in which a bargaining unit may be proposed, and given that counties may have limited experience with collective bargaining, the Division declines to propose a highly detailed list of enumerated

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[7] C.R.S. § 8-3.3-109.

[8] *Compare NLRB v. Cardox Div. of Chemetron Corp.,* 699 F.2d 148, 153 (3d Cir. 1983) ("The Board can not simply defer to a voluntary agreement . . . by an employer and a union without making any assessment that the unit identified within the agreement is proper.").

[9] *E.g.*, the unit does not contain any confidential or managerial employees.

factors in these new rules. Nevertheless, the Division finds that there are three factors that parties may wish to highlight as appropriate to help guide the Division's bargaining unit determination.[10]

Factor (A), the community of interest and right to effective representation of the petitioned-for employees, reflects long-standing considerations in the general field of public sector bargaining and bargaining units. "Community of interest" is the most traditional and long-standing approach to unit determination,[11] and largely mirrors considerations already present in the enumerated statutory factors of § 110 of COBCA.

Factor (B), the efficiency of county operations, is a broad policy consideration intended to take into account a number of county-employer concerns. This factor was informed by stakeholder comments — particularly, county commissioners expressed concern about the time and cost that might be involved in bargaining with multiple exclusive representatives — and by the statutes and rules of other states with long histories of authorizing and regulating public employee bargaining.[12] Some other states and Colorado's own Partnership for Quality Jobs and Services Act explicitly address this concern by structuring statewide bargaining units,[13] but as COBCA has no such provisions and expresses no such legislative intent, the rules neither require nor express a preference for any particular unit.

Factor (C), the promotion of harmonious, peaceful, and cooperative employment relations, is authorized explicitly in the Legislative Declaration, § 1(a), of COBCA, which states: "(1) The general assembly hereby finds and declares that: (a) It is the purpose of this act to promote harmonious, peaceful, and cooperative relationships between counties and county employees in the state of Colorado."[14]

I. Rule 4.4.2: Intervenor-initiated appropriate bargaining unit disputes.

Rule 4.4.2 incorporates an administrative procedure into the Division's determination of the appropriate bargaining unit based on an intervenor petition as provided by COBCA, C.R.S. § 8-3.3-109(3).

J. Rule 4.4.4: An appropriate unit.

Rule 4.4.4 makes explicit that the Division will apply the traditional rule that the Division need not search for the single *most* appropriate unit, but instead must decide only if a proposed unit is *an* appropriate unit.[15]

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[10] Other states that recognize a right to public sector bargaining consider similar factors in this context. Massachusetts, for example, statutorily requires the consideration of a very similar three factors. Mass. Ann. Laws ch. 150E, § 3 (2022) ("The commission shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation.").

[11] Outside the public sector, "community of interest" has been the NLRB's keystone for over eighty years. 3 NLRB Annual Report 174, 157 (1938) ("Self-organizations among employees is generally grounded in a community of interest in their occupations, and more particularly in their qualifications, experience, duties, wages, hours, and other working conditions. This community of interest may lead to organization along craft lines, along industrial lines, or in any other number of other forms representing adaptations to special circumstances. The complexity of modern industry, transportation, and communication, and the numerous and diverse forms which self-organization among employees can take and has taken, preclude the application of rigid rules to the determination of the unit appropriate for the purposes of collective bargaining."). Within the public sector, "community of interest" has remained a touchstone. Mass. Ann. Laws ch. 150E, § 3 (2022); 80 Ill. Admin. Code R. tit. 80, § 1210.37; Ohio Rev. Code Ann. § 4117.06(b).

[12] *E.g.*, Ohio Rev. Code Ann. § 4117.06 (2022) (requiring state employment relations board to consider, among other factors, "the effect of over-fragmentation, the efficiency of operations of the public employer; [and] the administrative structure of the public employer"); 5 Ill. Comp. Stat. Ann. 315/9(b) (2022) ("The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as: historical pattern of recognition; community of interest including employee skills and functions; *degree of functional integration*; interchangeability and contact among employees; *fragmentation of employee groups*; common supervision, wages, hours and other working conditions of the employees involved; and the desires of the employees. . . . [F]ragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit.") (emphasis added).

[13] *E.g.*, Wis. Stat. Ann. § 111.825(1) (2022) ("[C]ollective bargaining units for employees in the classified service . . . are structured on a statewide basis with one collective bargaining unit for each of the following occupational groups."). *See also* Colorado Partnership for Quality Jobs and Services Act, C.R.S. § 24-50-1105(1) ("There is a single partnership unit composed of all covered employees.").

[14] Ch. 260, sec. 2, § 8-3.3-101 *et seq.*, 2022 Colo. Sess. Laws 1900, 1900, § 1 (Legislative Declaration).

[15] *Morand Bros. Bev. Co.*, 91 N.L.R.B. 409, 418 (Sept. 25, 1950), *enforced in part*, 190 F.2d 576 (7th Cir. 1951) (NLRA includes "nothing . . . requir[ing] that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be 'appropriate.' It *must* be appropriate to ensure to employees, *in each case*, 'the fullest freedom in

K. Rule 4.4.5: Bargaining unit determination is not separately appealable.

Rule 4.4.5 follows COBCA and the general practice of not permitting an appeal of the bargaining unit determination alone. Not only would such appeals unreasonably delay elections and certifications, but the General Assembly ultimately authorized the Director to make this administrative determination.[16] Challenges to the bargaining unit determination may, however, be made post-certification, as part of an objection or appeal of the outcome of an election.

L. Rule 4.5.4: Sufficiency of showing of interest is not separately appealable.

As with the previous rule, Rule 4.5.4 follows COBCA and the general practice of not permitting an appeal of the showing of interest determination alone, for the same reasons detailed above as to Rule 4.4.5.[17]

M. Rule 4.6.7: Tiebreakers.

Rule 4.6.7 provides a rule for tiebreakers to provide clarity in advance of any tie. These tiebreaker rules represent a preference for the status quo in the event of a tie and follow Colorado precedent.[18]

N. Rule 4.6.8: Runoff Elections.

Rule 4.6.8 details the administrative procedure the Division will follow when more than one employee organization is on the ballot, as authorized by C.R.S. § 8-3.3-109(6)(b), which provides:

> Within twenty-eight days after a secret ballot election in which no employee organization receives a majority of the ballots cast, the director shall conduct a runoff election between the two employee organizations receiving the largest number of ballots cast. The director shall certify the results of the election, and, if an employee organization receives a majority of the ballots cast, the director shall certify the employee organization as the exclusive representative of all county employees in the appropriate bargaining unit, subject to any valid objections to the conduct of the election filed in accordance with this article 3.3 and the rules of the director.

C.R.S. § 8-3.3-109(6)(b) (2022). The Division finds that the statutory language mandating that the director "shall conduct a runoff election between the two *employee organizations* receiving the largest number of ballots cast" limits the runoff to employee organizations, since the "no representation" choice could not have received a majority in this scenario. This comports with practice and statutory guidance from other states with long-standing public sector bargaining.[19]

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exercising the rights guaranteed by this Act.'") (emphasis in original) (quoting Section 9(b) of the NLRA); Douglas L. Leslie, *Labor Bargaining Units*, 70 Va. L. Rev. 353 (1984). While the federal rule derives from the language of NLRA § 9(a), which requires only that the unit be "a unit appropriate for such purposes," 29 U.S.C. § 159(a), no COBCA language expresses an opposite intent, *see* C.R.S. § 8-3.3-110.

[16] C.R.S. § 8-3.3-110(1)(b) ("The director shall, upon receipt of a petition for a representation election, designate the appropriate bargaining unit for collective bargaining in accordance with this section. The designation must be determined by[,] . . . [i]f there is not agreement between the parties, an administrative determination of the director."). *See also FedEx Freight, Inc. v. NLRB*, 839 F.3d 636, 637 (7th Cir. 2016) (bargaining unit determination subject to judicial review post-election); *Elec. Data Sys. Corp. v. NLRB*, 938 F.2d 570, 572 (5th Cir. 1991) (bargaining unit determination subject to judicial review post-certification, after company refused to bargain, but denied that the bargaining unit was appropriate and that it violated the NLRA); *NLRB v. Lerner Stores Corp.*, 506 F.2d 706, 707 (9th Cir. 1974) (bargaining unit determination subject to judicial review only post-certification and after company's refusal to bargain).

[17] C.R.S. § 8-3.3-108(1)(b) ("The sufficiency of the showing of interest in a representation election for exclusive representation is an administrative determination made by the director or the director's designee and is not subject to challenge by any person.").

[18] *Graham Furniture Co. v. Indus. Com. of Colo.*, 331 P.2d 507, 509 (Colo. 1958) ("If the two [challenged and uncounted] ballots are against the Union as a bargaining unit it would result in a tie vote . . . and the Union would not have a majority as required by statute.").

[19] Wisconsin, for example, limits runoffs to employee organizations, but imposes additional requirements implicit in COBCA's rule, namely, that the employee organizations obtain, cumulatively, the majority of votes. Wis. Stat. Ann. § 111.83(5)(e) (2022) ("If at [certification election], at least 51 percent of the employees in the collective bargaining unit at all institutions in which the choice to participate in collective bargaining receives at least 51 percent of the eligible votes do not elect to be represented by a single labor organization, the commission may hold one or more runoff elections . . . until one representative receives at least 51 percent of the eligible votes."). Conversely, where COBCA states that "employee organizations" will appear in runoffs, runoff language in an Illinois statute uses the phrase "the choices" to signal that runoff ballots may include a "no representation" choice. 5 Ill. Comp. Stat. Ann. 315/9(e) (2022) ("In any election where none of *the choices* on the ballot receives a majority, a runoff election shall be conducted

O. Rule 5: Unfair Labor Practices.

Where the procedures authorized by COBCA do not conflict with the State Labor Relations Rules, the Labor Peace and Industrial Relations ("LPIR") Rules, or their authorizing statutes, this rule follows the administrative procedures for unfair labor practice complaints and appeals set forth in those rules, providing consistency and transparency in the Division's labor relations processes to the extent permitted by the relevant statutes.

P. Rule 6: Judicial Review.

Rule 6 outlines the circumstances in which parties may seek judicial review in a Colorado District Court. A party may seek judicial review of any Division, Director, Hearing Officer, or ALJ decisions, final determinations, or orders that constitute "final agency action," the category of administrative actions that are appealable under the APA and other administrative law:[20] "To be final, agency action must '(1) mark the consummation of the agency's decision-making process and not be merely tentative or interlocutory in nature, and (2) constitute an action by which rights or obligations have been determined or from which legal consequences will flow.'"[21] In the COBCA context, such final decisions are generally limited to (1) the certification or decertification of an exclusive representative or (2) a determination of an unfair labor practice complaint.[22] Other agency actions, decisions, orders, or interpretations — such as those detailed in Rules 4.4.5 and Rule 4.5.4 as to the determination of an appropriate bargaining unit and the sufficiency of showing of interest, respectively — are not appealable because as a general rule, "courts will not interfere with agency proceedings until the agency has taken final action."[23] Such non-final agency actions may be addressed within an appeal of a final agency action where relevant and appropriate. This distinction is consistent with the traditional delineation of which decisions, final determinations, and orders are and are not appealable, in labor relations contexts[24] and judicial appellate procedure.[25]

Q. Other.

Though the Division was authorized by COBCA to adopt rules about impasse, C.R.S. § 8-3.3-114, the Division concluded that the statute's detailed process did not require supplementation with rules at this time.

V. EFFECTIVE DATE. If adopted, the COBCA rules take effect July 1, 2023.

Scott Moss
Director, Division of Labor Standards and Statistics
Colorado Department of Labor and Employment

April 13, 2023
Date

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between the 2 *choices* receiving the largest number of valid votes cast . . . . A labor organization which receives a majority of the votes cast in an election shall be certified by the Board as exclusive representative of all public employees in the unit.") (emphasis added).

[20] C.R.S. § 24-4-106(2) ("Final agency action under this or any other law shall be subject to judicial review as provided in this section").

[21] *Doe v. Colo. Dep't of Pub. Health & Env't*, 2019 CO 92, ¶ 38, 451 P.3d 851, 858-59 (quoting *Chittenden v. Colo. Bd. of Soc. Work Exam'rs*, 2012 COA 150M, ¶ 26, 292 P.3d 1138, 1143; citing *Bennett v. Spear*, 520 U.S. 154, 177-78 (same criteria, federal APA); *see MDC Holdings, Inc. v. Parker*, 223 P.3d 710, 720-21 (Colo. 2010) (same criteria, whether town tax decision is "final" and appealable).

[22] C.R.S. § 8-3.3-106(3)(b) ("The decision and order of a hearing officer constitutes a final agency action pursuant to section 24-4-106. The director shall promptly provide all parties with a copy of the hearing officer's decision by United States mail or by electronic mail. A party may seek judicial review of the decision pursuant to section 24-4-106.").

[23] *Colo. Health Facilities Review Council v. Dist. Ct.*, 689 P.2d 617, 621 (Colo. 1984); *see also Envirotest Sys. v. Colo. Dep't of Revenue*, 109 P.3d 142, 144 (Colo. 2005) ("Unless the requirements of section 24-4-106(8) are met, interlocutory judicial review of an issue presented in the agency proceeding encroaches on the executive function; thus, courts otherwise will not interfere with ongoing agency proceedings until they are finalized."); *State Pers. Bd. v. Dist. Court of Denver*, 637 P.2d 333, 337 (Colo. 1981) (concluding that even "[a] claim that the statute is unconstitutional does not give the judiciary the power under section 24-4-106(8) to interfere with an administrative agency in advance of its taking final action").

[24] Notes 16-17; *see Linden Lumber Div., Summer & Co. v. NLRB*, 419 U.S. 301 (1974) (sufficiency of interest showing "not litigable").

[25] *See* C.A.R. 1(4)(a) (allowing appeal from "a final judgment"). *Compare Citizens for Responsible Growth v. RCI Dev. Ptnrs.*, 252 P.3d 1104, 1106-07 (Colo. 2011) (final court judgment or decision is generally "one that ends the particular action in which it is entered, leaving nothing further to be done to completely determine the rights of the parties") *with Scott v. Scott*, 136 P.3d 892, 897 (Colo. 2006) ("'appellate courts may not review interlocutory orders without specific authorization by statute or rule'") (quoting *Mission Viejo Co. v. Willows Water Dist.*, 818 P.2d 254, 258 (Colo. 1991)); *Curtis, Inc. v. Dist. Ct.*, 186 Colo. 226, 230, 526 P.2d 1335, 1337 (1974) ("[M]atters relating to pretrial discovery are ordinarily reviewable only by appeal and not in an original proceeding[.]"); *FTC v. Alaska Land Leasing, Inc.*, 778 F.2d 577, 578 (10th Cir. 1985) ("[P]retrial discovery rulings are interlocutory and not appealable as final orders[.]").